

<b>NORTHERN PLAINS RESOURCE COUNCIL,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>UNITED STATES BUREAU OF LAND MANAGEMENT, <u>et al.</u></b>  <b>Defendants.</b>	Cause No. CV-03-69-BLG-RWA  <b>DECLARATION OF DAVID J. BREISCH</b>
<b>NORTHERN CHEYENNE TRIBE, <u>et al.</u></b>  <b>Plaintiffs,</b>  <b>vs.</b>  <b>GALE NORTON, <u>et al.</u></b>  <b>Defendants.</b>	Cause No. CV-03-78-BLG-RWA  <b>DECLARATION OF DAVID J. BREISCH</b>

I, David J. Breisch hereby declare as follows:

I have personal knowledge of the matters set forth herein and if called to testify, I could and would testify competently thereto.

1. I am employed as a Mineral Resource Specialist by the Bureau of Land Management (BLM) in the Miles City Field Office. I am responsible for providing guidance and direction for the coal bed methane (CBM) program which includes reviewing proposals from industry, coordinating the environmental analyses of industry proposals, ensuring compliance of BLM authorizations with applicable laws, regulations, policies and land use plans, and working with other agencies, governments, Tribes and the public regarding the CBM program.

2. I have a Bachelor of Science degree in geography from the University of Wisconsin at LaCrosse.

3. I have been employed by BLM for 28 years, and have worked in the oil and gas program in the Miles City Field Office for approximately 24 years. During the time I have worked in the oil and gas program, I have worked in a staff position, project leader position and manager of the minerals staff in the Miles City Field Office.

4. I am familiar with this court's order of February 25, 2005 in the above captioned cases. I submit this declaration in support of BLM's proposal as to the scope of injunctive relief.

5. I am familiar with the BLM and Miles City Field Office's administration of the oil and gas program through my positions as a Mineral Resource Specialist, Project Leader and Assistant Field Manager for the Division of Mineral Resources. I am familiar with various laws, regulations, policies and land use plans applicable to the administration of the oil and gas program. I have reviewed industry applications for lease operations, and prepared or assisted with the preparation of the associated environmental analyses, including developing mitigation measures, for these applications. I have conducted field inspections of proposed oil and gas lease operations, construction operations, drilling and production operations, and reclamation work. As a manager, I have provided guidance and direction to an interdisciplinary staff regarding the implementation of the oil and gas program.

6. I am familiar with the 2003 Montana Statewide Oil & Gas EIS/Amendment and Record of Decision by providing guidance and direction during preparation of the document, and review of the document before BLM signed the Record of Decision.

7. I am familiar with CBM projects approved by the Miles City Field Office by participating in the review of Plans of Development submitted by companies, participating in the preparation of the associated environmental analyses, and conducting field inspections of proposed and constructed activities. I am also familiar with CBM projects that have been submitted to the Miles City Field Office which have not been approved.

8. I am familiar with potential CBM projects that companies might submit to the Miles City Field Office and the potential pace of development by companies by participating in conversations with company representatives.

9. I am familiar with various laws, regulations, policies and land use plans which provide the authority to BLM to administer the oil and gas program.

10. I am familiar with the management discretion provided in the 2003 Montana Statewide Oil & Gas EIS/Amendment and BLM's Record of Decision.

11. The requirements for filing a complete federal Application for Permit to Drill (APD) are the same for a CBM well as for a conventional oil or gas well. The requirements are found at 43 CFR 3162.3-1 and further detailed in Onshore Operating Order No.1. The main components of a complete APD are the Drilling Plan, the Surface Use Plan, Bonding and when applicable certification of a Surface Use Agreement with the private surface owner. Other supporting information is required. See attachment A.

12. The requirements for filing a complete federal Plan of Development (POD) for a proposed CBM production project to the Miles City Field Office are found in the 2003 Miles City Field Office CBM APD and Project POD Guidance Manual and summarized in the Record of Decision. The main components of a complete POD are the Master Drilling Plan, Master Surface Use Plan, Bond Certification, Water Management Plan,

Wildlife Monitoring and Protection Plan, Cultural Resources Plan, Weed Control Plan, Reclamation Plan, certification of Water Well Mitigation Agreements and when applicable, certification of a Surface Use Agreement with the private surface owner(s). Other supporting information is required. See attachment A.

13. The Miles City Field Office follows defined processes to guide the review and evaluation of a POD, conduct the associated environmental analysis, and complete the decision making process. See attachment A.

14. The 2003 Montana Statewide Oil & Gas EIS/Amendment included a Reasonably Foreseeable Development (RFD) scenario. The purpose of the RFD was to provide the public and the decision maker an idea where CBM development might occur during the 20 years following completion of the document, how many CBM wells might be drilled during each of those 20 years and how many CBM wells might be drilled per section of land. In addition, the RFD provided information for the analysis of cumulative impacts from all wells that might be drilled and the infrastructure that might be installed in addition to other activities. The RFD predicted the greatest potential for CBM development in the Montana Powder River Basin over an area of approximately 4.1 million acres. The RFD also predicted that CBM development might occur in 13 counties in southeastern and south central Montana and in portions of Blaine, Gallatin and Park counties, that the number of wells drilled would vary from year to year with the greatest number of wells predicted to be drilled in the third, fourth and fifth years, and that wells would be drilled on 80 acre spacing with multiple wells located on one well site when production of more than one coal seam occurs. See attachments B, C and D.

15. The Miles City Field Office has received several proposals from industry for CBM exploratory and production projects before completion of the 2003 Montana Statewide Oil & Gas EIS/Amendment. See attachments D and E. A brief description of these projects follows.

- a. Energen Ltd. submitted 7 APDs for wildcat exploratory CBM wells in southern Big Horn County near Decker, Montana (1994-1995). BLM prepared separate environmental analyses for each well before approving each APD. Each APD was approved for only the drilling and testing of each well. No production of water or gas was authorized by APD approval.
- b. Redstone Gas Partners became approved operator of Energen wells (1997). BLM approved 22 APDs submitted by Redstone in 1997, 1998 and 1999. Eleven of those wells were drilled with 7 completed as gas shut-in wells and 4 plugged and abandoned. BLM prepared separate environmental analyses for each well before approving each APD. Each APD was approved for only the drilling and testing of each well. No production of water or gas was authorized by APD approval.
- c. Redstone Gas Partners submitted a project proposal to drill up to 325 CBM wells on federal, private and state leases in southern Big Horn County near Decker, Montana (1998). The proposal projected placing up to 250 wells on production, drilling 25 exploratory wells in the area and plugging up to 50 of the wells if all 325 wells were drilled. BLM prepared an environmental analysis of the proposal,

but did not make a decision or approve any of the federal actions associated with the proposed project.

- d. Pennaco Energy submitted 12 Notices of Staking for exploratory CBM wells approximately 10 miles east of Decker in southern Big Horn County, Montana (1999). Subsequently, Pennaco submitted an APD for only one of the 12 proposed wells. BLM prepared an environmental assessment and approved the APD. The APD authorized only the drilling of the well. No testing or production of water or gas was authorized by the APD approval. BLM completed an additional environmental assessment addressing the drilling and testing of 11 wells. Only one well was drilled. The well bore has been secured and the well remains shut-in.
- e. Enernat of Wyoming submitted an APD for an exploratory shallow gas well in southern Custer County, Montana (1999). BLM completed an environmental assessment and approved the APD. The well was drilled, tested, plugged and abandoned.
- f. Powder River Gas submitted 56 APDs for exploratory CBM wells southwest of Broadus in central Powder River County, Montana (2000). BLM decided to divide the proposal into two phases. BLM completed an environmental assessment that analyzed the drilling and testing of 28 out of the 56 wells. Powder River Gas withdrew 39 of the 56 APDs submitted to BLM. BLM approved APDs for 15 wells. The APDs only authorized the drilling and testing of the wells. No production of water or gas was authorized by APD approval. Powder River Gas drilled only 9 of the 15 approved federal wells. Of the 9 wells drilled, 7 have been plugged and abandoned and 2 are shut-in with the well bores secured.
- g. Yates Petroleum submitted 14 APDs for exploratory CBM wells approximately 12 miles north of Decker in southeastern Big Horn County, Montana (2001). BLM completed an environmental assessment for one well and subsequently approved the APD. The APD only authorized the drilling and testing of the well. No production of water or gas was authorized by APD approval. The well was drilled but never tested and is shut-in with the well bore secured. Yates submitted an additional APD in 2004. BLM is in the process of completing the environmental analysis for the 14 wells.

16. The Miles City Field Office has received several proposals from industry for CBM exploratory and production projects after completion of the 2003 Montana Statewide Oil & Gas EIS/Amendment. See attachments D and E. A brief description of these projects follows.

- a. Fidelity Exploration & Production Company submitted the Tongue River-Badger Hills project plan of development in June of 2003. The project is located within the CX Field near Decker, Big Horn County, Montana. The project proposal included drilling and producing 85 federal wells, 72 private wells and 20 state wells along with installation of the necessary infrastructure and management of produced water. BLM completed an environmental assessment in February, 2004 of the proposal and approved the APDs for the 85 federal wells along with the approval to place one previously drilled federal well on production. MBOGC

approved permits for the private and state wells. All of the project wells have been drilled and placed on production and the associated infrastructure has been installed. Produced water would either be used for beneficial purposes or discharged into the Tongue River under an approved MDEQ permit. Northern Plains Resource Council and the Northern Cheyenne Tribe have challenged this project. Northern Plains Resource Council v. BLM, 03-185-BLG-RWA; Northern Cheyenne Tribe v. BLM, 04-17-BLG-RWA.

- b. Powder River Gas submitted the Coal Creek Pilot Project plan of development in August of 2003. The project is located approximately 10 miles northeast of Decker in southeastern Big Horn County, Montana. The project proposal included drilling and testing 8 federal CBM wells and 8 private CBM wells, and testing 2 previously drilled private CBM wells along with the installation and operation of a facility to treat water produced during testing operations before the water would be discharged into the Tongue River under an approved MDEQ permit. An environmental assessment was completed by BLM, MBOGC and MDEQ on November 19, 2004. The 8 private wells have been drilled and 6 federal wells have been drilled, but the wells have not been tested. The water treatment facility is being installed. This decision has not been challenged in Federal District Court.
- c. Fidelity Exploration & Production Company submitted the Tongue River-Dry Creek project plan of development in March of 2004. The project is located within the CX Field near Decker, Big Horn County, Montana. The project proposal included drilling and producing 24 federal wells, 3 private wells and 11 state wells along with installation of the necessary infrastructure and management of produced water. BLM completed an environmental assessment of the proposal in December, 2004 and approved the APDs for the 24 federal wells along with the approval to place one previously drilled federal well on production on December 16, 2004. MBOGC approved permits for the private and state wells. Drilling of the wells and installation of the associated infrastructure is ongoing. Produced water would either be used for beneficial purposes or discharged into the Tongue River under an approved MDEQ permit. This decision has not been challenged in Federal District Court.
- d. Fidelity Exploration & Production Company submitted the Tongue River-Coal Creek project plan of development in April of 2004. The project is located within the CX Field near Decker, Big Horn County, Montana. The project proposal included drilling and producing 132 federal wells, 62 private wells and 16 state wells along with installation of the necessary infrastructure and management of produced water, and placing 4 previously drilled wells on production. An environmental assessment was completed by BLM, MBOGC and MDEQ on January 19, 2005. Drilling and construction activities began after completion of the environmental assessment and stopped on March 1, 2005 because of a timing stipulation to protect sage grouse nesting habitat included with the federal leases. Operations are expected to resume in June when the timing stipulation is no longer in effect. Produced water would either be used for beneficial purposes or discharged into the Tongue River under an approved MDEQ permit. The decision has not been challenged in Federal District Court.

- e. Fidelity Exploration & Production Company submitted the Tongue River-Deer Creek North project plan of development on January 31, 2005. The project is located within the CX Field near Decker, Big Horn County, Montana. The project proposal included drilling and producing 71 federal wells and 99 private wells along with installation of the necessary infrastructure and management of produced water, and placing 4 previously drilled wells on production. Produced water would either be used for beneficial purposes or treated in an onsite facility before the water would be discharged into the Tongue River under an approved MDEQ permit. An environmental assessment is being prepared by BLM, MBOGC and MDEQ with a projected completion date of June, 2005.
- f. Fidelity Exploration & Production Company submitted the Tongue River-Pond Creek project plan of development on February 2, 2005. The project is located within the CX Field near Decker, Big Horn County, Montana. The project proposal included drilling and producing 55 federal wells, 23 private wells along with installation of the necessary infrastructure and management of produced water, and placing 13 previously drilled wells on production. Produced water would either be used for beneficial purposes or discharged into the Tongue River under an approved MDEQ permit. An environmental assessment is being prepared by BLM, MBOGC and MDEQ with a projected completion date of June, 2005.
- g. In general, because of wildlife related lease stipulations, the drilling and construction activities window is between June 16 and November 30. Recent PODs have been submitted early in the calendar year to take advantage of this drilling and construction window. The objective of industry's POD planning schedule is to gain BLM approval and complete the POD drilling and construction phase during the same calendar year.

17. BLM has had discussions with companies that have expressed an interest in exploring for and developing CBM in southeastern Montana during the next few years. See attachments D and E. A summary of possible activities follows.

- a. 2005
  - 1. Potential applications that could be submitted for CBM wells within the CBM Interim Development Area
    - i. 130 production wells (federal, private, state)
  - 2. Potential applications that could be submitted for CBM wells outside the CBM Interim Development Area
    - i. 40 exploration wells (federal, private, state) in Powder River County
- b. 2006
  - 1. Potential applications that could be submitted for CBM wells within the CBM Interim Development Area
    - i. 300 production wells (federal, private, state)
  - 2. Potential applications that could be submitted for CBM wells outside the CBM Interim Development Area

- i. 190 production wells (federal, private, state) in Powder River County (includes the 40 exploratory wells in 17.a.2.)
- 3. Potential applications that could be submitted for CBM wells within or outside the CBM Interim Development Area
  - i. 350 production wells (federal, private, state) in Big Horn and Powder River Counties

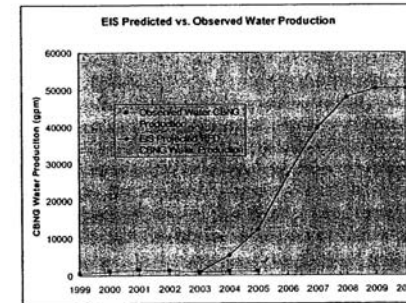
c. 2007

- 1. Potential applications that could be submitted for CBM wells within the CBM Interim Development Area
  - i. 150 production wells (federal, private, state)
- 2. Potential applications that could be submitted for CBM wells outside the CBM Interim Development Area
  - i. 50 production wells (federal, private, state) in Powder River County
- 3. Potential applications that could be submitted for CBM wells within or outside the CBM Interim Development Area
  - i. 250 production wells (federal, private, state) in Big Horn and Powder River Counties

18. BLM's proposal for APD/POD development in the interim time period to complete the SEIS is detailed in attachment F. Rationale for the proposal follows.

- a. The geographic area was determined by the location of existing and proposed CBM development, the location of existing infrastructure and the potential for development within the next two years. BLM determined the interim geographic area contains federal lease acreage held by all of the oil and gas companies that have contacted BLM and expressed interest in exploring for and developing CBM in the interim time period. See attachment G.
- b. The proposed limitation on BLM approved CBM production wells was determined by the current pace of development and the FEIS predicted increase in the rate of development during the third and fourth years of a development cycle for a CBM field. See attachment D. This well limit offers the opportunity for controlled growth of CBM development, while maintaining a viable CBM industry in Montana. BLM recognizes it has no authority over the location and number of state and fee wells. Federal mineral drainage may occur during the interim time period.
- c. Exploratory CBM projects would not be restricted by this proposal to afford industry the opportunity to adequately assess CBM resources. Montana BLM's experience has shown that such exploration projects can be completed with minimal impact to the environment.
- d. Mitigation currently imposed by the BLM on CBM operations occurring on federal leases has proven effective in minimizing or eliminating adverse impacts. BLM determined that additional mitigation would help ensure federal CBM operations could continue without causing any irreparable harm during the interim period and address issues and concerns identified by the plaintiffs.

19. The 2003 Montana Statewide EIS/Amendment predicted that the peak water production would occur in year 6 of CBM development (FEIS, page 4-8), when 7,095 wells are projected to produce a total of 43,989 gpm of CBM produced water. The surface water impact analysis in the EIS is based upon this maximum projected discharge rate. The EIS assumptions lead to the projected water production in year 2 of the RFD (equivalent to calendar year 2005) to total 12,210 gpm in Montana. Actual water production currently totals approximately 1,020 gpm (Fidelity Pond Creek POD, January 2005). This is 8% of that was projected for this time, or 2.3% of the maximum projection for year 6.



The total field water production levels are lower than anticipated due to fewer wells (437 producing wells vs. 1666 predicted wells in year 2) and lower initial water production rates. The analysis contained within the FEIS assumed that initial water production rates, per well, would be approximately 14 gpm (see Appendix A of the Water Resources Technical Report). Actual production rates have been substantially less than this estimate, mainly due to the new development occurring adjacent to existing development areas, where hydrostatic pressure has already been reduced. In their most recent POD, Fidelity estimated that initial water production rates would be approximately 6 gpm (Pond Creek POD, January 2005). This estimate is in line with observed initial production rates in this area.

The EIS assumed that under Alternative E, the selected Alternative, that CBM water would be produced at the rate of approximately 33,282 gpm during year 6 in the Tongue River Watershed. The EIS projected that 6,656 gpm would be put to beneficial use, 9,984 gpm would be managed using infiltration basins, 6,656 gpm would be managed by injection, 1,600 gpm would be discharged untreated to surface waters, 4,192 gpm would be treated, and 4,192 gpm would be managed through evaporation basins (EIS Table 4-35).

Currently Fidelity is the only operator producing CBM water in Montana. Fidelity's water management plan for the Pond Creek POD shows that of the approximately 1,020 gpm of water currently being produced in the CX Field, approximately 200 gpm is being

put to beneficial use (industrial use at the Spring Creek mine, and stock water), while the remaining 820 gpm is being discharged directly to the Tongue River. Off drainage impoundments within Fidelity's CX Field are used to supply stock water, and provide for storage capacity in the case of infrastructure problems.

Fidelity has a MPDES permit which allows for the discharge of up to 1,600 gpm of untreated CBM water into the Tongue River. This existing permit is undergoing modification by the MDEQ at this time. Fidelity has also applied for a MPDES permit to treat up to 1,700 gpm of CBM water via ion exchange, and to discharge the treated water into the Tongue River. This application is currently under review by the MDEQ.

Powder River Gas has an approved MPDES permit to treat up to 1,122 gpm of CBM water via ion exchange, and discharge the treated water into the Tongue River below the Tongue River dam. Powder River Gas has not yet completed construction of the water treatment facility, and no water is being produced or discharged at this time. It is predicted that the 18 wells would produce less than 450 gpm of CBM water during the testing phase of the pilot project.

20. The 2003 Montana Statewide EIS/Amendment emissions inventory and model assumed that an emission rate for compressor engines would be 1.5 grams per horsepower-hour (g/hp-hr) for nitrogen oxides (NO<sub>x</sub>). The actual emission factors have been considerably lower and the MDEQ has used 1 g/hp-hr best available control technology emission factors for permitting CBM compressors.

The 2003 Montana Statewide EIS/Amendment determined the peak levels of air quality emissions for each criteria pollutant based on the number of CBM wells and associated infrastructure predicted each year. These peak emission levels for each pollutant were used to complete the air quality analysis. The MDEQ has determined that the NO<sub>x</sub> emissions are the limiting pollutant from compressor stations because such emissions are the most likely pollutant to violate any ambient air quality standard or increment. The peak emission year for NO<sub>x</sub> is year 19 when 78 % or 11,812 CBM wells would be producing. In comparison, only 3 % of the total predicted CBM wells (437) are producing at this time.

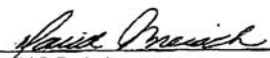
21. The BLM is committed to implementing the concept of adaptive management. The Record of Decision (at page 11) describes the project monitoring and resource monitoring that will be conducted in areas of CBM development. At the project level, oil and gas operations have been and are being inspected to determine compliance with approved permits. At the resource level, inspections have been and are being conducted to evaluate the effectiveness of mitigation measures, determine the need for existing mitigation measures or the need for additional mitigation measures, ensure the desired results are achieved through approved operations and mitigation measures, and assess resource conditions and trends. The BLM uses the results of inspections and monitoring

to modify existing or future approvals as necessary to minimize or eliminate impacts from CBM operations to resources or land uses. See attachment H which shows monitoring requirements in the Record of Decision and summarizes ongoing monitoring activities. Authority for implementing adaptive management is found in the terms of the federal oil and gas lease, the regulations at 43 CFR 3160, and land use plans. BLM can implement adaptive management through lease stipulations or conditions of approval included with approved permits.

22. Through ongoing monitoring and inspection of federal CBM activities, the BLM has not observed or been notified of any adverse impacts such as coal seam fires, methane seeps, methane caused explosions, depletion of aquifers, saline seeps, or violations of State and National air and water quality standards.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 23, 2005

  
David J. Breisch  
Minerals Resource Specialist  
Bureau of Land Management

Tab D

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

NORTHERN PLAINS RESOURCE	)	Case No. CV 03-69-BLG
COUNCIL,	)	Case No. CV 03-78-BLG
Plaintiffs,	)	(consolidated)
v.	)	
UNITED STATES BUREAU OF LAND	)	DECLARATION IN SUPPORT OF
MANAGEMENT; et al.,	)	INTERVENOR-DEFENDANTS'
Defendants,	)	PINNACLE GAS CORPORATION,
and	)	ANADARKO PETROLEUM
PINNACLE GAS CORPORATION, et al.,	)	CORPORATION, AND DEVON ENERGY
Intervenors.	)	CORPORATION'S BRIEF IN SUPPORT
	)	OF BOND APPLICATION
	)	
	)	
	)	
NORTHERN CHEYENNE TRIBE, et al.,	)	
Plaintiffs,	)	
v.	)	
GALE NORTON, et al.,	)	
Defendants,	)	
and	)	
PINNACLE GAS CORPORATION, et al.,	)	
Intervenors.	)	

DECLARATION OF PETER G. SCHOONMAKER QUANTIFYING  
PINNACLE GAS CORPORATION'S LOSS ASSOCIATED WITH THE 2005 DRILLING SEASON

Pursuant to 28 U.S.C. §1746, I, Peter G. Schoonmaker, declare the following:

1. My name is Peter G. Schoonmaker.
2. I am over 18 years of age and am competent to testify in this matter, and have personal knowledge of the facts set forth in this Declaration.
3. I reside in Sheridan, Wyoming.



4. I am the Chief Executive Officer of Pinnacle Gas Resources, Inc. ("Pinnacle"), a privately held company based in Sheridan, Wyoming.
5. I attended Denver University in the late 1970s and have over 15 years of experience in the energy industry, including experience in Coalbed Natural Gas development in the Powder River Basin in both Montana and Wyoming since its inception in 1996.
6. Prior to working at Pinnacle, I was an executive with U.S. Energy Corporation with responsibility for natural resource drilling operations, including the drilling and management of over 750 coalbed natural gas wells. I later served as President and Chief Operating Officer of Rocky Mountain Gas, Inc. (a subsidiary of U.S. Energy Corporation).
7. I have held my current position at Pinnacle since June 2003.
8. In my current position, I am responsible for Pinnacle's day-to-day operations, future growth and development, along with compliance with all regulatory affairs. Pinnacle is the Operator on Record for some 500 coalbed natural gas wells in the Powder River Basin.
9. I have practical experience in, and personal knowledge of, the matters discussed in this Declaration.
10. Pinnacle currently holds valid federal leases for oil and natural gas in the Powder River Basin area of Montana and Wyoming.
11. Pinnacle has invested over \$22 million dollars for coal bed natural gas development in Montana, and intends to continue investing millions of dollars for development of coalbed natural gas in Montana over the next ten years.

**Financial Impact on Pinnacle Resulting From Loss of the 2005 Drilling Season**

12. The Ninth Circuit's stay order enjoins the Bureau of Land Management from approving any coalbed methane production projects in the Powder River Basin in Montana, including those submitted by Pinnacle and currently pending before the BLM, pending the court's decision on Plaintiffs' appeal of this Court's orders. I understand that, given the Ninth Circuit's briefing and argument schedule, the appeal will not be decided prior to the close of the 2005 drilling season. Thus, no matter which way the appellate court rules, the effect of the Ninth Circuit's stay order is to prevent Pinnacle from any development or drilling activities in the Powder River Basin for the entire 2005 season. I am submitting this declaration and accompanying supporting documents in order to quantify for the Court the financial damages Pinnacle will suffer as a result of the loss of the 2005 season.
13. Pinnacle has prepared its damages estimate using alternative calculations based on either a two or three quarter delay (i.e., six to nine months), as a result of the Ninth Circuit's injunction on drilling. This two to three quarter delay in coalbed natural gas development will cause financial injury to Pinnacle because it reduces the present value of Pinnacle's cash flow by \$4.8 to \$7.1 million dollars. (See Table 1 entitled "Summary of Impact of Deferral" attached to this Declaration.) This estimate, described in more detail below, was derived using Pinnacle's standard methodology and assumptions for evaluating the income and costs associated with coalbed natural gas development.
14. The estimate of damages begins with 60 wells anticipated for development in the 2005 season in the affected area. We have then estimated the income from each well and subtracted our anticipated operating expenses and other costs. This calculation is summarized in "Table 2: Pinnacle's Net Cash Flow," which is attached to this Declaration. In order to estimate the income per well, we started with a published index price for natural

gas in the relevant area. The current New York Mercantile Exchange (NYMEX) published price for a three year hedge based on the settlement price on close of the June 17, 2005 trading session is \$7.62/Mmbtu (i.e., million british thermal units). Then, to derive a net price, Pinnacle subtracts the following from the NYMEX price: the Rocky Mountain differential, shrinkage (fuel), a btu factor, and transportation/compression costs. This calculation results in a net price of \$5.439/Mcf (thousand cubic feet). Pinnacle adjusted the NYMEX price to \$5.00/Mmbtu after the three-year hedge expires, which translates into a net price of \$3.393/Mcf.

15. From the net price, we subtract estimated production costs, including Pinnacle's production taxes, direct operating expenses per well and capital costs based on its current experience in the Powder River Basin (including drilling and completion costs, infrastructure costs, and royalty payments). This calculation yields a net gas price per well.

16. In sum, Pinnacle's net cash flow lost as a result of delay in the 2005 drilling season is based on its projected net gas sales for the affected area for any given quarter less its costs for that quarter. Pinnacle assumes it will be able to recover that income, but because it will be delayed, it has a present value loss due to the delayed cash flow. Pinnacle used 10 percent to calculate the net present value of its cash flow because 10 percent is the industry's standard rate for calculating present value. Based on the methodology and assumptions set forth above, and set forth in "Table 3: Economic Impact to Pinnacle from Deferral of Cash Flow due to Delay in Drilling" attached to this declaration, Pinnacle estimates that its losses for the two to three quarter delay imposed by the current Ninth Circuit stay order are \$4.8 million (2 quarters) to \$7.1 (3 quarters) million dollars.

17. As a result of the delay in drilling, Pinnacle may face either lower prices for its product or higher costs. If either or both of these are true, Pinnacle's estimates of loss may be understated. For example, the current published NYMEX price for the relevant area of \$7.69 is the highest price for that commodity for this time period in the last 40 to 50 years. If crude production oil increases over the next year, and natural gas prices correspondingly decline, Pinnacle will suffer an additional loss since it would have lost the opportunity to sell its product at a higher price, further reducing Pinnacle's net income. If the NYMEX price drops by \$1.00/Mcf, the financial harm to Pinnacle of the delay would increase by \$700,000 (2 quarters) to \$1.1 million (3 quarters).

18. Similarly, Pinnacle's assumptions about future costs—including the cost of steel, capital costs, copper wire, and wages—may be underestimated if these items rise more quickly than Pinnacle has estimated. If drilling costs increase by 10 percent, the financial harm to Pinnacle of the delay would increase by \$200,000 (2 quarters) to \$300,000 (3 quarters).

**Other Impacts on Pinnacle if Pinnacle is Prohibited from Drilling for the 2005 Season**

19. Pinnacle's current business plan depends upon the drilling of these coalbed natural gas wells to fulfill its need for cash flow and to repay the loan and associated interest related to its recent purchase of these leases from Marathon Oil Company. The halt to all further activities in the Powder River Basin ordered by the Ninth Circuit could further adversely affect the company by impeding its ability to obtain additional funding for coalbed natural gas development in Montana, as well as for future projects. This fact could mean that wells would not just be delayed, but might not be drilled at all if financing cannot be obtained.



20. Similarly, coalbed natural gas development in the Powder River Basin currently faces a very tight market for labor, supplies, and equipment. At this point, Pinnacle has the ability to ensure an adequate labor supply, and high quality equipment and consultants. The stay not only prohibits Pinnacle from developing these wells at this time, but could impede Pinnacle's future ability to obtain high quality equipment, employees, and contractors, who may have moved on to other jobs or locations.

21. In sum, if the delay is sufficiently long, Pinnacle might be prevented from developing these leases and may be forced to invest capital elsewhere to ensure its investors a consistent and timely rate of return.

22. Coalbed natural gas development by both state and private wells in Montana and in the surrounding areas of Wyoming has the potential to drain large amounts of natural gas from Pinnacle's leases. If Pinnacle is delayed from exploring and developing its properties, the company will suffer financially from this drainage, and those resources cannot be recovered in the future.

**Impact on the Federal Government, State of Montana, and Counties if Pinnacle is Prohibited from Drilling for the 2005 Season**

23. Pinnacle estimates that a two to three quarter delay will result in the direct loss of 10 jobs, and will result in the additional loss of approximately 80 contractor/vendor jobs. These jobs may be lost completely, or simply deferred for a year. In either case, there will be an associated loss in the net present value associated with the collections of federal income tax, state income tax, and state payroll tax associated with these jobs.

24. A two to three quarter delay will directly harm the state and counties of Montana since the Montana production tax of 0.76% (for the first 12 months of operation) and 9.26% (after

twelve months) will be deferred. The Montana production tax is split between the state and county: The state of Montana receives 54.95% and the relevant county receives 45.05%. Pinnacle estimates that the approximate decrease in the net present value of this revenue is \$354,000 for the state of Montana and \$289,000 for the county for a six month delay, and \$524,000 for the state of Montana and \$429,000 for the county for a nine month delay. These calculations are set forth in "Table 4: Lost Montana Production Tax from Deferral of Cash Flow due to Delay in Drilling," which is attached to this declaration.

25. A two to three quarter delay will also defer royalty payments to the state of Montana and the federal government, resulting in a decrease in the net present value of the total payment collected by these two government entities. Royalty payments are assessed at a rate of approximately 12.5%, of which the federal government receives 50% and the state of Montana receives 50%. Pinnacle estimates that the decrease in the net present value of this revenue is \$900,000 for the federal government and \$900,000 for the state of Montana for a six month delay, and \$1.4 million for the federal government and \$1.4 million for the state of Montana for a nine month delay. These losses are shown in "Table 5: Lost Royalty Income from Deferral of Cash Flow due to Delay in Drilling" accompanying this Declaration.

26. As discussed in Paragraph 17, a result of the delay in drilling, Pinnacle may face either lower prices for its product or higher costs. Any present value losses associated will also be incurred by the various government entities in the form of lower Montana production taxes and lower royalty payments.

27. Finally, Pinnacle is required to pay the county property taxes on the equipment it uses in coalbed natural gas development. As a result of the delayed drilling, the county will have a net present value loss of approximately \$26,000 in property taxes.

BLM SUPPLEMENTAL EIS FOR CBNG PHASED DEVELOPMENT  
SCOPING COMMENT FORM



Individual respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. BLM will not accept anonymous comments.

Name: Kathryn Shoulderblade  
Organization (if applicable): \_\_\_\_\_  
Address: PO Box #1003  
City, State, Zip: Lame Deer, Mont. 59043  
Email address: \_\_\_\_\_

Please submit your comments by September 3, 2005.

Please choose a category (or categories) for each of your comments.

Air Resources	Soil Resources	Phased Development
Cultural Resources	Vegetation	
Native American Concerns	Water Resources	Other
Oil and Gas	Wildlife	

Please check one box only:

- ☐ Use email only to update me on project progress and the SEIS.  
☒ Please keep me on your mailing list for hard-copy information.  
☐ I have no further interest and do not want to receive SEIS mailings.

1. Category: Water Resources our water will be ruined, polluted (salt water). Humans & wildlife, vegetation, etc. will be affected (may die) springs will also dry up, or no water at all, the next generations will have to pay for our mistakes, money is not life. Aquifers will take years + years to recharge.

2. Category: Oil and Gas whether the methane gas is taken on or off the Reservation, it will still affect everything (life). we live in a big world, the methane should be drilled out somewhere else, like Calif. there's big deposits of methane there. I say NO to methane drilling on or off the Reservation,

Kathryn Shoulderblade  
PO Box #1003  
Lame Deer, Mt. 59043



BLM  
SEIS/Amendment Comments  
Attn: Mary Bloom  
111 Garryowen Road  
Miles City, Mt 59301



33301+7000-11 0002



3. Category:

4. Category:

5. Category:

BLM SUPPLEMENTAL EIS FOR CBNG PHASED DEVELOPMENT  
SCOPING COMMENT FORM



Individual respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. BLM will not accept anonymous comments.

Name: Letty Lye  
Organization (if applicable): Powder River Co. CFRD and self  
Address: RT 89  
City, State, Zip: Broadview, MT. 59317  
Email address: \_\_\_\_\_

Please submit your comments by **September 3, 2005**.

Please choose a category (or categories) for each of your comments.

Air Resources	Soil Resources	Phased Development
Cultural Resources	Vegetation	
Native American Concerns	Water Resources	Other
Oil and Gas	Wildlife	

Please check one box only:

- ☐ Use email only to update me on project progress and the SEIS.  
☒ Please keep me on your mailing list for hard-copy information.  
☐ I have no further interest and do not want to receive SEIS mailings.

1. Category: Phased Development  
I think by the very nature of oil & gas development it will be "phased" - not every well will be drilled at once -

2. Category: Cultural  
The cultural resources can be identified and protected or artifacts be removed and preserved -



Stamp

Postage Due

BLM  
SEIS/Amendment Comments  
Attn: Mary Bloom  
111 Garryowen Road  
Miles City, MT 59301

3. Category: Oil & Gas  
The prices and shortages we are experiencing now should indicate the need for more resource development and the demand for heating fuels hasn't even begun yet.

4. Category: Vegetation  
Science has shown that the CBM produced water can be used to grow crops and water livestock and wildlife successfully -

5. Category: Other - Economic  
The revenue that the State and County would receive from CBM production would be tremendous. Our young folks could stay here and make a living - the old folks could retire in comfort.



BLM SUPPLEMENTAL EIS FOR CBNG PHASED DEVELOPMENT  
SCOPING COMMENT FORM



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Name: JACOB TALL BULL JR.  
Organization (if applicable): TERO (TRIBAL EMPLOYMENT RIGHTS OFFICE)  
Address: P.O. BOX 308  
City, State, Zip: LAME DEER, MONTANA 59043  
Email address: jacobtb71@hotmail.com  
Please submit your comments by September 3, 2005.

Please choose a category (or categories) for each of your comments.

Air Resources  
Cultural Resources  
Native American Concerns  
Oil and Gas

Soil Resources  
Vegetation  
Water Resources  
Wildlife

Phased Development  
Other EXISTING DRILL SITES  
ARCO COMPLETED 27 YRS. AGO  
EST.

Please check one box only:

- ☒ Use email only to update me on project progress and the SEIS.  
☒ Please keep me on your mailing list for hard-copy information.  
☐ I have no further interest and do not want to receive SEIS mailings.

1. Category: NATIVE AMERICAN CONCERNS: Mainly existing burial sites that are identified, my family, TALL BULL'S have (2) known areas - Muddy Creek + Sand Rock Formation next to Morning Star High School that definitely are not to be disturbed. Any other burial sites identified by NAC Cultural Commission.
2. Category: PHASED DEVELOPMENT When & if this proposal goes through, (TERO) would need to know exact facts and figures as development proceeded.
3. Water Resources: Maps or concern water would be restored for future generations.

Stamp

Postage Due

BLM  
SEIS/Amendment Comments  
Attn: Mary Bloom  
111 Garryowen Road  
Miles City, Mt 59301

3. Category:

4. Category:

5. Category:

jean public  
<jeanpublic@yahoo  
.com>

08/05/2005 08:15  
AM

To  
mtseis@blm.gov,  
rodney.frelinghuysen@mail.house.gov  
cc

Subject  
public comment on federal register  
of 8/5/05 vol 70 #150 pg 45417

noi oil & gas feis usdoi blm  
mt 020 05 1310-do-cbmp

i do not approve of tearing up montana for  
profiteering oil and gas wells. i do not approve of  
montana ending up with dirty/polluted water because of  
this extensive drilling. montana had wonderful lands  
and it has been allowed to be destroyed by profiteers.  
the taxpayers of american have paid to save these  
lands and our present administration is sneakily  
taking those taxpayer lands and allowing them to be  
polluted and destroyed. the wild horses are being  
taken off their long time homes and sent to  
slaughterhouses to be destroyed.

this kind of aberrant behavior by humans is  
intolerable. we must have more respect for god's work.

i do not favor this plan at all. i oppose it.

b. sachau  
15 elm st  
florham park nj 07932

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<http://www.yahoo.com/r/hs>

From: Strobel.Philip@epamail.epa.gov [mailto:Strobel.Philip@epamail.epa.gov]

Sent: Thursday, September 08, 2005 6:27 PM

To: jseekins@all-llc.com

Cc: mary\_bloom@blm.gov; svcboda.larry@epamail.epa.gov

Subject: EPA on phased development

John:

I don't have much more for you on our comments on phased devel. beyond what we discussed last week.

Our air program is working on some scoping comments to address your air resource questions (class I, lessons learned from WY, protocols, etc.). We should get those to you next week along with any water-specific comments.

Because some of my team members were out of the office this week. I'll summarize my thoughts on phased development now, and reserve the right to get back to you with more detail next week based on my Team's input.

Phased Development:

It seems to make most sense to "phase" development in response to the bigger resource concerns.

First, all significantly impacted resources should be reviewed for the ability of phased devel. to avoid or reduce impact levels (i.e. water quality, water quantity, air quality, visibility, wildlife, soil disturbance/sedimentation, noxious weeds, recreation, etc). For some resources, I'd expect that either:

1. phasing would make little difference, or
2. there might be other available mitigation that would negate the need for phasing.

I think our meeting on the 21st should include this kind of evaluation regarding which impacts fit best with phasing. I see the strongest likely fit with things like wildlife resources and soil disturbance/sedimentation. Depending on the results of the air analysis, air quality or visibility could also be candidates. It will be helpful to have a full contingent of resource experts and CBM experts to fully flush out the possibilities in a couple weeks.

Ideally, we'd find a scenario where 2 or more significant resources could benefit from the same phasing plan and build an alternative accordingly.

As we discussed on the phone, phasing could be done either:

1. spatially: one area (watershed, habitat resource, etc) is developed fully while others are rested. Subsequent development occurs as earlier areas are completed and restored.
2. temporally: all areas are developed relatively concurrently, but the pace of the development is designed to better protect a given resource or resources.

At first blush, it seems spatial phasing has more potential benefit, but I won't be surprised if someone comes up with a valid, useful temporal model.

I'll get back to you again next week with more. Thanks for your patience.

Phil

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-  
Philip Strobel  
EPA Region 8 - NEPA Program  
(303) 312-6704



**From:** "Jon W. Seekins" <jseekins@a11-11c.com>  
**To:** "'Margaret Spence'" <mspence@parametrix.com>  
**Date:** 09/12/05 12:22:49 PM  
**Subject:** SEIS Comment email

from me  
<dmngmfm@yahoo.co  
m>

08/23/2005 01:08  
PM

mtseis@blm.gov

To

cc

Subject

Attn: Mary Bloom, SEIS/Amendment  
Comments

What is the BLM's policy on CBM development in floodplains? How do you  
plan to enforce those policies? Are they in accordance with FEMA's rulings  
on development in floodplains?

Laurie Kelley  
PO Box 771  
Forsyth, MT 59327  
406-351-1942

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